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GOVERNMENT INFORMATION AND INDIVIDUAL RIGHTS
SUBCOMMITTEE

OF THE

COMMITTEE ON GOVERNMENT OPERATIONS

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WASHINGTON, D.C. 20515

June 4, 1976

Honorable Daniel Inouye
Chairman
Senate Select Committee on Intelligence
442 Russell Senate Office Building
Washington, D.C.

Dear Senator Inouye:

I am deeply concerned that valuable documents relating to this nation's intelligence activities will be lost forever to investigators and historians, should abrupt approval be given to agency requests to lift the present moratorium on files destruction.

The letter to the Senate Majority and Minority Leaders of June 2, 1976 from Central Intelligence Agency Director George Bush (attached) both illustrates the problem, and its immediacy. Mr. Bush bluntly states that, "Along with the backlog of routine administrative records, the Agency will destroy records which were collected and maintained by the Agency, and which were subject to investigation by the Rockefeller Commission and the Select Committee." The proposed destruction plan of CIA is so broad that it could include the destruction not only of documents inspected by Church Committee investigators and returned to the CIA, but documents "subject to investigation" which in fact were never examined by the Committee or its members.

In his letter, Mr. Bush does not provide any itemization of the materials he intends to dispose of. He keys the destruction plans to records falling within the scope of the Rockefeller Commission (directed by the President "to determine whether any domestic CIA activities exceeded the Agency's statutory authority") and section 2 of S. Res. 21, establishing the Church Committee.

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As you are aware, the Senate directed the original Select Committee on Intelligence Activities under S. Res. 21, subsection 14 of section 2, for example, to determine "The extent...of overt and covert intelligence activities in the United States and abroad." If Mr. Bush is now given free license to destroy all files falling within the ambit of section 2 of the Resolution, the new Standing Select Committee on Intelligence will be greatly hampered in its oversight efforts. Subsection 13 of section 2 also directed the Church Committee to determine "Whether there is unnecessary duplication of expenditure and effort in the collection and processing of intelligence information..." Surely the Director of Central Intelligence should not be permitted to destroy these related papers without further elaboration.

A spokesman for the Senate Intelligence Committee is quoted in this morning's Washington Post (Friday, June 4) as saying: "There's no objection from this source because this committee has gone out of business...We assume there'll be a record copy kept (of non-routine files)." There is nothing in the Bush letter to suggest that copies of documents slated for destruction will be saved. Conversations my staff had with CIA legislative counsel last night indicated that records would be destroyed, with no provision for the keeping of duplicates or historical tapes.

Mr. Bush appeared before this Subcommittee on April 28 of this year to testify on my bill, H.R. 12039, which would require agencies to notify the subjects of CIA's CHAOS program, FBI's COINTEL operations, and certain other improper federal surveillance activities. The following exchange took place at the hearing between Representative Michael Harrington of the Subcommittee and CIA legislative counsel George Cary (transcript, pages 47-8):

Mr. Harrington. Will (the CHAOS records) exist if the Director is taken at his word and there is a destruction after the moratorium ends? Will it exist in any fashion on computer lists, separate or not, so that it could be reconstituted?

Mr. Cary. It will not exist.

Mr. Harrington. There will be no record at all in any fashion, in any form that will allow your Agency in any one of the programs -- not limiting it to CHAOS -- to allow there to be a retrieval or reconstruction of the information gathered on these people?

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Mr. Cary. I am here under oath and I want to be sure we have no misunderstanding. There is some information which we keep on American citizens which is entirely proper information, and which starts from employment investigations, as information with respect to contractors with the Agency, and things of that sort. Aside from those areas which have been described in law and regulation as proper for the Agency, we fully intend to expunge these records completely.

The assumption implicit in Mr. Bush's letter is that since many of these documents have been reviewed by one or two investigators, they can be of no further use or interest to others. This is simply not the way investigators -- or historians, for that matter -- go about their task. A bit of information overlooked by one researcher may have tremendous importance for another who is approaching the subject with different questions or knowledge. Facts build on themselves. A review of documents skimmed by Church Committee staffers months ago may, in light of the Committee's recently published final reports, assume a new significance in an on-going look at agency operations. Furthermore, the examination by a scholar fifty years from now of an agency's raw files may spark an entirely different emotional and intellectual impact than a reading of a dry congressional report summarizing those files.

Director Bush assures us that "all records destruction will be fully consistent with other applicable laws, presidential directives, and the requirements of pending litigation and Justice Department investigations." The only major pending litigation involves the CIA CHAOS and mail interception programs. Presumably, all other CIA documents which were "subject to investigation" could be disposed of -- including data on covert actions, foreign assassination attempts, the Huston Plan, relationships with U.S. reporters, and the use of religious groups, and academic and voluntary organizations.

The "applicable laws" referred to by Mr. Bush would include the records disposal provisions of Title 44, Chapter 33 of the U.S. Code. No government document may be destroyed by a federal agency unless its destruction is included in a records disposal schedule approved by the Archivist of the United States. Deputy Assistant Attorney General Mary Lawton of the Office of Legal Counsel told this Subcommittee on April 28 that the resumption of the FBI's records disposal program, which was approved by the Senate leadership and the Senate Select Committee within the last two months,

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"involves only those records approved for destruction by the National Archives and Records Service under the established Records Control Schedule."

This Subcommittee has oversight jurisdiction over the National Archives and Records Service. From our experience, NARS is simply not equipped to oversee or to make detailed judgments regarding which intelligence files should be preserved because of possible future interest to researchers or congressional investigators. Officials of the Archives acknowledge this.

The Records Disposition Division of the Archives' Office of Federal Records Centers has a staff of about ten people. The appraiser with responsibility for the FBI, for example, also is responsible for the disposition of all federal judicial records, and the files of HUD, Justice, the D.C. Government, SEC, Civil Service, the Army, the Environmental Protection Agency, and the Federal Home Loan Bank Board -- with back-up responsibility for four other agencies. On March 26, 1976, he approved, and the Archivist subsequently signed, authorization for the destruction of "Closed files of the Federal Bureau of Investigation Field Division containing investigative reports, inter- and intra-office communications, related evidence...collected or received during the course of public business in accordance with the FBI investigative mandate."

The appraiser's approval was based upon a review of a 12-page 1969 records retention plan for the FBI, which states that "field records generally are not complete and need not be retained any longer than administrative needs require access to backup material."

The Government Accounting Office Report on FBI "Domestic Intelligence Operations" has commented on the failure of the FBI in adequately controlling Field Office practices on the distinction between preliminary inquiries and full-scale investigations, with the resulting failure to control proper reporting to Headquarters. Recent press reports have also noted the lack of availability of files and records presumably found in the New York City Field Office to the Justice Department lawyers defending the Socialist Workers Party case in New York. The New York Times reported on April 30 that Mr. J. Stanley Pottinger is said to believe that it was "possible" that evidence to contradict certain findings contained

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in his report to the Attorney General on the FBI's investigation into the King assassination "might turn up in the 2,500 files, believed to contain more than 200,000 documents, in FBI field offices around the country."

The Archives appraiser told the Subcommittee staff he was unaware of these reports, and acknowledged it was quite possible that FBI records, as those involving the King assassination, might be destroyed under the disposal schedule. But he contended that with the large volumes of paper he was dealing with, across-the-board approvals were the only kind feasible.

As you know, the moratorium on intelligence-related files destruction is not legally binding. It resulted from a request by the Senate leadership in late January, 1975, which the agencies were asked to observe. (A copy of the moratorium letter to GSA Administrator Arthur Sampson is enclosed.) It was tied to the investigation of the Church Committee and S. Res. 21. Now that that Committee has expired, it is to be expected that all the affected agencies will ask to be removed from its provisions. Typical is the April 23, 1976 letter from Deputy Defense Secretary Robert Ellsworth (attached) requesting that the moratorium be lifted for all DoD materials.

S. Res. 400, in establishing the Senate Committee on Intelligence, does provide in section 10 that the records in the possession of the Church Committee shall be turned over to the new standing Committee. But many documents which were accepted by the Church Committee on a "loan" basis have been returned to the agencies. The Resolution does not address itself to the question of the disposition of these materials, nor of those records viewed by Committee investigators which were never removed from agency files or transferred to the Senate.

Mr. Bush in his letter says that the CIA "is required" to destroy much of this material under the provisions of the Privacy Act of 1974 (5 USC 552a) and Executive Order 11905.

The Privacy Act does prohibit an agency from maintaining systems of records on individuals which are inaccurate, irrelevant to the statutory purpose of the agency, or outdated. An agency is also prohibited from keeping a record "describing how any individual exercises rights guaranteed by the First Amendment unless expressly authorized by statute or by the individual about whom the record is maintained or unless pertinent to and within

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the scope of an authorized law enforcement activity." (Section (e) (1), (5), and (7) of the Act.) Mr. Bush glosses over the distinction which the Act allows, between the screening of impermissible personal data, and the agency policy documents which approved the gathering of such information. The Privacy Act clearly states that access to records otherwise available under the Freedom of Information Act shall not be restricted. The Privacy Act's coverage is limited to personal data, the release of which would constitute a clearly unwarranted invasion of personal privacy. In addition, Deputy Assistant Attorney General Lawton has noted: "As we read the Privacy Act, it prohibits agency maintenance of certain records but permits the Archives to maintain those portions of the records it finds to be of historic significance."

Mr. Bush's tortured reading of Executive Order 11905 appears to be that the prohibitions listed in the order against future agency actions require that documents relating to past activities, now restricted, be destroyed. The order simply does not raise the issue of records, nor does this interpretation appear consistent with its reform intent.

I would urge that no approval be given the CIA's request -- nor the request of any other agency -- to destroy materials covered by the Senate leadership moratorium, until fuller consideration can be given the matter. At the very least, a full and detailed itemization of the records proposed for destruction should be provided by each agency. The impact on the new Intelligence Committee could be enormous, and I would urge that the Committee in its organizational meetings formally consider the issue. I would also respectfully suggest that the leadership or the Committee invite the Archivist of the United States to outline his responsibility for records preservation and the steps he will take to insure the retention of papers of historical interest.

It would be a tragic mistake to approve sweeping requests for records destruction at this time. The new Select Intelligence Committee should be given an opportunity first to choose its staff, and to thoroughly appraise its objectives and the investigative areas it may wish to pursue. An effort should be made then to reduce the legitimate storage burdens of a large volume of agency administrative records, travel vouchers, applicant files, and the like. The point is that the intelligence agencies have a decided

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self interest in disposing of embarrassing and damning evidence about themselves. Some arrangements must be made to allow outside oversight of any planned records disposal by those familiar with the contents of the documents and the nature of agency filing systems. Some of the alternatives might include a special panel of historians to advise the Archivist; a task force of Senate Intelligence staff members assigned to report back to the Select Committee; or consultation with the Justice Department prosecution force, with an evaluation by the intelligence oversight advisory committees and/or the Government Accounting Office.

If you or your staff have further questions please contact Subcommittee Staff Director Timothy Ingram at 225-3741.

Sincerely,

BELLA S. ABZUG
Chairwoman